# 10 U.S.C. §1044a NOTARY TRAINING

**Developed by**
**Legal Assistance Branch (JLA)**
**Judge Advocate Division, HQMC**

**UPDATED 29 Mar 16**

# Learning Objectives

- **Understand the legal authority under which notaries act**
- **Understand the types of authorized notarial acts**
- **Identify persons authorized to perform and persons eligible to receive 10 U.S.C. §1044a notarial services**
- **Understand under what circumstances documents may be certified as “true copies”**
- **Understand use of the notary seal and notary log book**
- **Understand a notary’s duties and responsibilities**

# Who Is Required To Take This Training

- **The following persons authorized to act as notaries under 10 U.S.C. §1044a and the JAGMAN must complete this training prior to performing notarial acts:**
  - **All civilian attorneys serving as legal assistance officers**
  - **For the performance of notarial acts at locations outside the United States, all civilians employed by the Department of the Navy that support Marine Corps legal assistance offices**
  - **All legal and assistant legal officers**
  - **All Marine Corps officers with MOS of 4430 while assigned as legal administrative officers**
  - **All judge advocates, including Reserve judge advocates when not in a duty status**
  - **All Marine Corps 4421 legal services specialists E-4 and above who are serving in legal billets under the direct supervision of a judge advocate or a legal assistance civilian attorney**

# Who Is Required To Take This Training

- **Military exigencies may interfere with completing this training prior to performing notarial acts. Failure to complete this training will not affect the validity of their notarial acts, but they must complete training as soon as practicable**

- **Training consists of studying these slides and signing a Duties and Responsibilities form, a copy of which will be retained by the legal office**

- **The OIC shall verify training completion and authorize performance as a notary**

- **The Duties and Responsibilities Form, sample OIC Certificate of Completion and Authorization, and copy of these training slides are posted on:**

  **http://www.hqmc.marines.mil/sja/unithome.aspx under "JAD Resources"**

# What a Notarization Signifies

- **A notarization generally represents that :**
  - **The signer of a document personally appeared before the notary on the date and at the location indicated**
  - **The signer was positively identified by the notary**
  - **The signer acknowledged to the notary that the signature was freely made for the purpose stated in the document**

# Notarial Authority
## State and Federal

- **State (Notary Public)**
  - **Must meet state or U.S. Territory requirements and be appointed/commissioned as a Notary Public in that jurisdiction**
  - **State law controls who is eligible to become a state notary, what acts a notary may perform, and the form and content of the notarial act**
  - **Many, if not all, states have adopted a "Uniform Recognition of Acknowledgments Act"**
    - **For a notarial act performed in one state to be recognized as legal by a different state, the notarial act must comply with BOTH states' notary laws**

# Notarial Authority
## State and Federal

- **An active duty servicemember may become a state notary if he or she meets the state statutory criteria**

- **State notary statutes**

  - **North Carolina – N.C. G.S. 10B http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?Chapter=0010B**
  - **South Carolina – S.C. Code of Law, Title 26 http://www.scstatehouse.gov/code/t26c001.php**
  - **Virginia – Code of Virginia, Title 47.1 http://law.lis.virginia.gov/vacode/title47.1/**
  - **California – CA Government Code, Title 2, Ch.3., § 8200-8230 http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=2.&part=&chapter=3.&article=**
  - **Arizona - AZ Revised Statues, Title 41, §41-311-370 http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=41**
  - **Louisiana – Louisiana Revised Statutes, Title 35 http://www.legis.la.gov/legis/Laws_Toc.aspx?folder=75&level=Parent**

- **Federal - 10 U.S.C. §1044a – See following slides**

**THE FOLLOWING MATERIAL FOCUSES ON**

**10 U.S.C. §1044a NOTARIAL AUTHORITY**

# Controlling Law and Regulations
## 10 U.S.C. §1044a Notaries

- **10 U.S.C §1044, Legal Assistance**
  - **Authorizes the military Departments to provide legal assistance to certain categories of individuals regarding their personal civil legal affairs**
  - **Under such regulations as may be prescribed by the Departmental Secretary, the Judge Advocate General, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, is responsible for establishment and supervision of legal assistance programs**
- **10 U.S.C. §1044a , Authority to Act as a Notary**
  - **Federal law prescribing general criteria under which notary acts may be performed**
  - **10 U.S.C. §1044a notarizations are legally valid in all States and U.S. Territories**

# Controlling Law and Regulations
## 10 U.S.C. §1044a Notaries

- **JAGINST 5800.7_ (series), Manual of the Judge Advocate General (JAGMAN)**
  - **Contains policy and procedures implementing 10 U.S.C. §1044 and §1044a authority for the Department of the Navy**
    - **Chapter 7 - Legal Assistance Eligibility**
    - **Chapter 9 - Authority of Armed Forces Personnel to Perform Notarial Acts**
- **MCO 5800.16, Legal Support and Administration Manual (LSAM)**
  - **LSAM will replace LEGADMINMAN – publication expected summer/fall 2015**
  - **Provides policy and procedures for the Marine Corps Legal Assistance Program**
  - **Includes USMC Notary training requirements and policy/procedures for performing notarial acts**
  - **Still must comply with JAGMAN**
- **NOTE:**
  - **JAGINST 5801.2B, Navy Legal Assistance Program, 15 Feb 13, provides policy and procedures for the Navy Legal Assistance Program, to include the Navy's notary requirements and procedures**
    - » **This JAGINST is NOT applicable to the Marine Corps**
    - » **Does have helpful notary clauses that can be tailored for USMC use**

# Persons Authorized to Provide Notarial Services

- **10 U.S.C. §1044a grants general powers of a notary public and of a consul of the United States to the individuals below:**
  - **All judge advocates, including reserve judge advocates when not in a duty status**
  - **All civilian legal assistance attorneys**
    - **UPDATE 4/23/15: volunteer civilian attorneys may notarize under 1044a - their Service Agreement with the office must include notarization as a duty; volunteer civilian paralegals may not notarize under 1044a**
  - **All adjutants, assistant adjutants, and personnel adjutants, including reserve members when not in a duty status**
  - **For the performance of notarial acts at locations outside the U.S., all employees of a military Department or the Coast Guard who are designated by regulations of the Secretary concerned or by statute to have those powers for exercise outside the U.S. (see JAGMAN)**
  - **All other members of the armed forces, including reserve members when not in a duty status, designated by regulations of the armed forces or by statute to have those powers (see JAGMAN)**

# Persons Authorized to Provide Notarial Services

- **In addition to the list in 10 U.S.C. §1044a, the JAGMAN adds the following persons to those authorized to perform notarial acts:**
  - **For performance of notarial acts outside the U.S., all DoN civilians supporting legal assistance offices**
  - **All officers in the grade of 0-4 and above**
  - **All COs, XOs and admin officers**
  - **All legal and assistant legal officers**
  - **All Marine Corps officers with an MOS of 4430 while assigned as legal administrative officers**
  - **All Limited Duty Officers (law)**
  - **All (Navy) legalmen upon completing training, signing a duties and responsibilities form, registering with Code 16 – linked to relevant duty assignment**
  - **All Marine Corps legal services specialists E-4 and above, while serving in legal assistance billets, when authorized by the cognizant OIC ****

**** The next JAGMAN update will change this to read: "All Marine Corps 4421 legal services specialists E-4 and above who complete the notary training and certification process to perform federal notarial acts that is directed by the SJA to CMC, while serving in legal billets under the direct supervision of a judge advocate or a legal assistance civilian attorney."**

**The LSAM will include the new language to allow 4421's (E4 and above) in SJA offices to perform notarial acts.**

# Authorized Recipients of Notary Services

- **10 U.S.C. §1044a notaries shall provide notarial services only for those who are authorized to receive the service under 10 U.S.C. §1044a, which lists the following:**
  - **Members of any of the armed forces**
  - **Other persons eligible for legal assistance under the provisions of section 1044 of title 10 or regulations of the Department of Defense**
    - **Look at 10 USC §1044 (legal assistance statute) and JAGMAN legal assistance chapter for the list of persons eligible for legal assistance**
    - **Because the JAGMAN expands the category of persons eligible to receive legal assistance services, always have a copy of the JAGMAN and refer to it if you are not sure about someone's eligibility**
  - **Persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands**
  - **Other persons subject to the Uniform Code of Military Justice outside the United States**
    - **Ref: 10 U.S.C. §802-Art. 2 – Persons Subject to UCMJ**

# Identification

- **The notary must determine the person's eligibility for services and whether the person appearing before him/her is the person named in the document to be signed**

- **Acceptable forms of identification (JAGMAN)**
  - **Valid State or Federally issued identification card**
  - **Driver's license**
  - **Passport**

  - **When impossible or impracticable for active duty member to retrieve his or her state or federally issued identification card**
    - **OIC can authorize reliance on the Common Access Card (CAC ) as identification**
    - **Notary may use personal knowledge of an active duty service member or personal knowledge of a credible witness to verify identity**

# When Not to Notarize

- **A 10 U.S.C. §1044a notary <u>shall not</u> perform the notary service if:**
  - **The signer is not eligible for the service**
  - **The signer cannot verify his or her identification in accordance with the JAGMAN**
  - **The signature was not made in the notary's presence (unless the client or customer is willing to re-sign in the notary's presence after satisfactorily proving his or her identity)**
  - **The signer appears to be coerced and/or incapacitated – alert your OIC**

# Notary Clauses

- **Documents prepared by the legal assistance or SJA office (i.e. powers of attorney)**
  - **JAGINST 5801.2B has sample §1044a notary clauses used by Navy legal assistance offices – can tailor these for USMC**
  - **<u>CAUTION</u>: No one is required to accept/honor a power of attorney (i.e. power of attorney from deploying Marine for another person to act in matters on the Marine's behalf )**
- **Some legal assistance offices choose to have all documents they prepare notarized by the office's state authorized notary**
  - **May be more readily recognized by a state/local entity**
  - **If the document is likely to be used in a different state, comply with both states' notary laws**
  - **Although not specifically prohibited in 10 U.S.C. §1044a or the JAGMAN, * <u>office policy should be</u> that only state notaries may notarize real estate documents due to differing state requirements; however, overseas legal assistance offices may use §1044a notarial authority but only with OIC approval** ***(* updated 3/29/16)***

# Notary Clauses

- **Documents <u>not</u> prepared at the legal assistance or SJA office**
  - **Many times persons ask legal offices to notarize documents they bring with them**
  - **Such documents generally have pre-printed notary clauses prepared for a state authorized notary**
  - **If the document lacks a notary clause, a notary who is not also an attorney may <u>not</u> decide what type of notarial act is appropriate (i.e. whether an oath is required, whether the document requires witnesses, etc.) – consult OIC**
  - **Although not specifically prohibited in 10 U.S.C. §1044a or the JAGMAN, * <u>office policy should be</u> that only state notaries may notarize real estate documents due to differing state requirements; however, overseas legal assistance offices may use §1044a notarial authority but only with OIC approval** ***(* updated 3/29/16)***

# Notary Clauses

- **10 U.S.C. §1044a Notary**
  - **The person performing the notarial act must specify in the document's notary clause that they are among those persons authorized by 10 U.S.C. §1044a to provide the notarial service**
    - **Notary's Name**
    - **Rank and billet (position) (i.e. SSgt Samuel Smith, Legal Assistance Clerk)**
    - **Branch of Service - USMC**
    - **Command or Legal Office to which assigned (complete address)**
  - **Notary clause also recites the eligibility of the signer to receive the service**

**** Sample notary clauses can be found in JAGINST 5801.2B (updated 3/29/16)**

## Types of Authorized Notarial Acts

- **Oaths and Affirmations**
  - **An Oath is a solemn, formal declaration or promise to tell the truth, made before a notary public, under penalty of perjury that traditionally invoked reference to "so help me God" as witness**
  - **An Affirmation has the same legal effect as an oath. It is a solemn declaration regarding the contents of the written affidavit, made by persons who decline to take an oath referencing God for religious or conscientious reasons**
- **Acknowledgments and Affidavits**
  - **An Acknowledgment is a signed statement by the notary that the signer 1) personally appeared before the notary 2) was positively identified by the notary and 3) acknowledged having signed the document in the physical presence of the notary who affixes his or her notary acknowledgment to the power of attorney, deed, beneficiary designation form, contract, etc.**
  - **An Affidavit is a written or printed declaration of facts, made voluntarily, and confirmed by oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation**

# Sample 10 U.S.C. §1044a Acknowledgment – Long Form

**(see following slide for Short Form)**

**With the United States Armed Forces**
**at_____**

**On this the _____ day of _____, 20_____, before the undersigned officer ** or other person authorized to serve as a federal notary under 10 U.S.C. § 1044a, personally appeared _____, satisfactorily proven, (a) by presentation of a valid military identification card ,or (b) other state or federal government issued identification card, to be * (a) serving in or retired from the Armed Forces of the United States, or (b) a lawful dependent of a person serving in or retired from the Armed Forces of the United States, or (c) a person serving with, employed by, or accompanying the Armed Forces of the United States outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands, and to be the person whose name is subscribed to the within instrument and acknowledged that he or she executed the same. And the undersigned does further certify that he or she is at the date of this certificate an officer ** or other person of the Armed Forces of the United States having the general powers of a notary public under the provisions of Section 936 or 1044a of Title 10 of the United States Code (Public Law 90-632 and 101-510).**

**AUTHORIZED TO ACT AS A NOTARY PUBLIC UNDER THE PROVISIONS OF SECTION 1044a OF TITLE 10 OF THE UNITED STATES CODE.**

**_____**
**Signature of Notary**

**_____**
**Printed Rank, Name, and Billet**

**NO SEAL REQUIRED BY LAW.**

**Branch of Service: _____**

**Command or Organization: _____**

*** TRAINING NOTE: 10 U.S.C. §1044 and the JAGMAN include other persons entitled to legal assistance services. For example: Officers of the Commissioned Corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay; certain Reservists; certain survivors of otherwise eligible persons. When notarizing, be sure to determine who they are and, if their status is not shown in the notary clause above, discuss with legal assistance attorney/SJA whether to add it.**

**** Added "or other person" in order to include enlisted notaries (updated 3/29/16)**

# Sample 10 U.S.C. §1044a Acknowledgment – Short Form

**With the U.S. Armed Forces**
**At _____**

**I, _____, the undersigned officer or other person authorized to serve as a federal notary under 10 U.S.C. § 1044a, do hereby certify that on this __day of_____, 20___, before me, personally appeared _____(name of person whose signature is being acknowledged), who presented a valid military identification card or other state or federal government issued identification card, and then did execute the foregoing instrument as a true, free, and voluntary act and deed. I do further certify I am qualified pursuant to the authorizing statute to act in this capacity, this certificate is executed by me in that capacity, and by statute no seal is required.**

**/s/(signature of notary)**
**(Name of notary)**
**(Grade and Branch of Service)**
**(Command or Organization)**
**** Commission expires: (Insert EAOS for enlisted, "Indefinite" for officers and civilians )**
**Notary pursuant to 10 U.S.C. § 1044a**

_____

**Training Note:**
**** Some sample forms include "Commission expires _____" DELETE IT [There are several types of commissions 1) "commissioned" as a state notary and, 2) "commissioned officer" in the military - enlisted personnel do not have a commissions.**
**Using the word "commission" in a sec. 1044a notary clause is confusing - recommend deleting this line – it is not a requirement**
**(updated 3/29/16)**

## Sample State Notary Acknowledgment

**STATE OF VIRGINIA**

**COUNTY OF _____**

**The foregoing instrument was acknowledged before me this _____ (date) by _____ (name of person acknowledged).**

**_____**

**Notary Public**

**Printed Name: _____**

**My Commission Expires:**

**_____**

# Types of Authorized Notarial Acts

*(con't)*

- **Certification of copies**

  - **A certified "true copy" is a document certified (verified) as being a true copy of the original document created or on file in the originating office**

  - **10 U.S.C. §1044a and legal personnel who are state notaries**

    - **shall only certify copies of original documents created by their office or originals maintained as part of the office's responsibilities**

    - **shall not certify copies of public records, court records, county recorder records, birth certificates, marriage certificates, etc.**

# True Copy? - NO

STATE OF WASHINGTON, }
County of ..... } ss.

№ 96624

## Marriage Certificate

This Certifies, that the undersigned, W. A. Mayor

by authority of a License bearing date the 24th day of June A. D. 192 6.

and issued by the County Auditor of the County of King, did on the 24th day of June

A. D. 192 6, at the residence of W. A. Mayor Seattle

County and State aforesaid, join in Lawful Wedlock Edward T. Allen

of ~~the County of~~ Waukegan Ill and Elizabeth M. Ayres

of ~~the County of~~ Aberdeen South Dakota with their mutual assent, in the presence of

Ralph D. Mayor and Mrs. W. A. Mayor witnesses.

In Testimony Whereof, witness the signatures of the parties to said ceremony, the witnesses and myself,

this 24th day of June A. D. 192 6

| Witness: | Parties: | Officiating Clergyman or Officer: |
|---|---|---|
| Ralph D. Mayor | Elizabeth M Ayers | Rev. W. A. Mayor |
| Mrs W. A. Mayor | Edward T. Allen | |
| | | P. O. Address Seattle Washington |

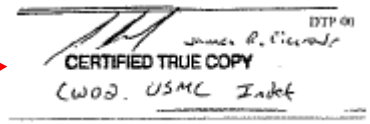
Filed ..... 192 .....

This Certificate must be filled out and filed with the County Clerk of the County where the ceremony is performed, within three months after the ceremony.—See Pierce's Code, Vol. 1, Sec. 3712.

The County Clerk's Fee for recording this Certificate is One Dollar, to be paid by the party applying for the license at the time each license is issued.—Pierce's Code, Vol. 1, Sec. 3713.

Failure to make and deliver Certificate to the County Clerk within three months is punishable by a fine of not less than $25.00 or more than $300.00.—See Pierce's Code, Vol. 1, Sec. 3714.

**This is NOT an acceptable "True Copy" of the original Marriage Certificate. Only the government office that issued the original certificate or maintains the original as part of its official responsibilities can certify the copy (i.e. County Recorder's Office).**



# STATEMENT OF VERIFICATION

- **Military members married and/or divorced in foreign countries often send HQMC copies of translated documents as proof of family member dependency status (i.e. Japanese Family Registry/Certificate of Acceptance, etc.)**

- **Some overseas legal offices have created a "Statement of Verification" form to reflect that although they cannot certify as true the foreign document, it appears to the signer to be a genuine and unaltered copy of the original that is presented.**

- **PROBLEM: the Statement of Verification template used by many offices is not accurate - see following slides**

**Slide added 3/29/16**

# CURRENTLY IN USE

**********

**PREAMBLE: This is a MILITARY DOCUMENT prepared pursuant to Title 10 United States Code, Section 1044b, and executed by a person authorized to receive legal assistance from the military services. Federal law exempts this document from any requirement of form, substance, formality, or recording that is prescribed for documents by the laws of a state, the District of Columbia, or a territory, commonwealth, or possession of the United States. Federal law specifies that this document shall be given the same legal effect as a document prepared and executed in accordance with the laws of the jurisdiction where it is presented.**

## Statement of Verification

FYI - Verification in the legal context refers to a declaration under oath or upon penalty of perjury that a statement or pleading is true.

Name/Description of Verified Document
FAMILY REGISTER, AND DIVORCE DECREE, MARRIAGE REGISTRATION

I, the undersigned, compared the attached copy with what appears to be a genuine and unaltered original document or record. Based on what I have seen the original document (or record) of which this is a copy (or, from which this excerpt was taken) appears to be genuine and unaltered and to have been made at the time purported. I provide this verification form as a service per State Department Foreign Affairs Manual 7 FAM 534.3. My office did not produce the attached document, and I am not qualified to certify authenticity. This document consists of 4 pages.

Signature:

Printed Name

Title:

Date: 2016 03 10th

AUTHORIZED TO ACT AS A NOTARY PUBLIC UNDER ARTICLE 136(a) UCMJ, SECTION 1044a OF TITLE 10 OF THE UNITED STATES CODE AND PUBLIC LAW 101-510. NO SEAL REQUIRED BY LAW.

Cannot notarize own signature

**Why is this Preamble here?** It is used with Military Powers of Attorney per 10 U.S.C. sec. 1044b – not with a Statement of Verification. What should be used? A document that includes the Statement, is acknowledged and signed by the person who saw the original being copied, and is notarized by someone other than the person signing the statement. See suggested format next slide. (although a Statement is not required to be notarized – it is good practice to do it)

**FYI - 7 FAM 534.3b(3): "Although originals of evidentiary documents may be sent to SSA (Social Security Admin), copies of originals certified by the posts and military personnel are preferred to avoid the loss of originals. …Foreign language documents are acceptable, and may be translated by post or U.S. military personnel. SSA will determine whether or not the evidence submitted meets SSA's requirements for issuance of a**

Slide added 3/29/16

# STATEMENT OF VERIFICATION
## RECOMMENDED

I, _____, DO SOLEMNLY SWEAR THAT:

I compared the attached copy of _____ *(list document(s) being verified - i.e. Yoko Smith's Family Register, John Smith's Divorce Decree, etc.)* with what appears to be a genuine and unaltered original document or record. Based on what I have seen the original documents (or record) of which this is a copy (or, from which this excerpt was taken) appears to be genuine and unaltered and to have been made at the time purported. I provide this verification form as a service per State Department Foreign Affairs Manual, 7 FAM 534.3b. My office did not produce the attached document and I am not qualified to certify authenticity. This document consists of ____ pages.

WITNESS the following signature on this __day of_____, 20___.

Signature _____
Printed Name _____
Grade and Branch of Service _____
Command or Organization _____

With the U.S. Armed Forces
At _____

I, _____, the undersigned officer or other person authorized to serve as a federal notary under 10 U.S.C. § 1044a, do hereby certify that on this __day of_____, 20___, before me, personally appeared _____(name of person whose signature is being acknowledged), who presented a valid military identification card / government issued identification card , and then did execute the foregoing instrument as a true, free, and voluntary act and deed. I do further certify I am qualified pursuant to the authorizing statute to act in this capacity, this certificate is executed by me in that capacity, and by statute no seal is required.

Signature of Notary _____
Printed Name _____
Grade and Branch of Service _____
Command or Organization _____
Notary pursuant to 10 U.S.C. § 1044a

***(FOR USE WHEN VERIFYING FOREIGN DOCUMENTS)***

**Slide added 3/29/16**

# Types of Authorized Notarial Acts

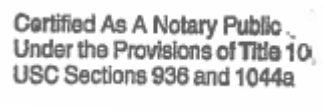
**PRACTICE QUESTIONS:**

**1) Assume you are an authorized 10 U.S.C . §1044a Notary. A service member brings you a certified true copy of his birth certificate that has the raised seal of the state agency that issued the original. He has Xeroxed several copies of the certificate and asks you to certify them as true copies. Can you do it? Why or why not?**

**2) Would it change your answer if the service member brings in the original birth certificate and, after you watch him Xerox copies, he asks you to certify the copies as true? Why or why not?**

# Notary Stamp or Seal

- **A notary seal is an embossed seal or ink stamp affixed to a legal document by a notary public**
  - **State notaries must have their own notary seal or stamp with their name**
  - **The notary is responsible for safekeeping and destroying the seal/stamp once he/she ceases to be a notary**
- **10 U.S.C. §1044a specifically exempts federal military notaries from the requirement to place an official seal or stamp on documents they notarize**
  - **BUT as a matter of good practice, 10 U.S.C. §1044a notaries <u>should</u> use a Department of the Navy/Marine Corps embossed seal or stamp, in addition to the notary authorization language**




**NOTE: §1044a Notary's legal office, with OIC approval, may purchase the embosser/stamp as an office asset (fiscal justification: needed to further the legal assistance mission)**

# Notary Logbook

- **Notary logbook (a.k.a. notary journal)**
  - **An official record of each notarial act performed by the notary public, required for all notarial acts (including recording presence of witnesses)**
- **Types of notary logbooks**
  - **State notary logbook**
    - **Personal to the notary**
    - **Keep and retain consistent with state rules**
  - **10 U.S.C. §1044a notary logbook *** CHANGES 24 Jul 15**
    - **§1044a notary logbooks are NOT part of DON Systems of Records (OJAG Code 13 Opinion , 8 Jun 15)**
    - **Are personal to the notary**
    - **Notary takes and retains when leaves office**

# Entries in Notary Logbook

- **Entries in the 10 U.S.C. §1044a notary logbook**
  - **Logbook shall include the following information**
    - **Signer's name and address**
    - **Signer's signature**
    - **Type of document notarized or attested to**
    - **Date of the notary act**
    - **Type of identification used to verify the signor's identity (no numbers)**
    - **Printed name of the Notary**
  - **Notaries shall <u>not</u> collect or record in their notary logbook**
    - **SSN's**
    - **DoD identification numbers**
    - **Passport numbers**
    - **Driver's license numbers or identification card numbers that can be associated to a particular individual**
- **Entries in state notary logbooks – follow state requirements**

# Sample §1044a Notary Logbook

**LEGAL ASSISTANCE OFFICE – CAMP LEJEUNE**
**YEAR 2015**

| | A | B | C | D | E | F |
|---|---|---|---|---|---|---|
| 1 | SIGNER'S SIGNATURE | PRINT SIGNER'S NAME & ADDRESS Rank if Applicable | TYPE OF ID USED | TYPE OF DOCUMENT NOTARIZED | DATE OF NOTARIZATION | PRINTED NAME/RANK OF NOTARY |
| 2 | *Mary Smith* | Mary Smith<br>11 St. Cloud St.<br>Wash DC 22112 | Military Dep ID Card | Special POA for Child Care | 3-Aug-15 | Capt John Doe |
| 3 | *Sam Sloane* | Cpl Sam Sloane<br>H&S Bn, MCB CamLej | CAC<br>(OIC Authorized) | Gen. POA for Spouse (deployment related) | 3-Aug-15 | Capt John Doe |
| 4 | *Henry Higgins*<br>(Testator) | Sgt Julius Orange<br>Security Bn<br>MCB CamLej | Passport | Last Will and Testament & Ancillary Docs | 4-Aug-15 | Capt John Doe |
| 5 | *James Zimmerman*<br>( Witness) | SSgt James Zimmerman<br>Security Bn MCB CamLei | Military ID Card | Last Will and Testament & Ancillary Docs | 4-Aug-15 | Capt John Doe |
| 6 | *Julius Orange*<br>( Witness) | Sgt Julius Orange<br>Security Bn<br>MCB CamLej | NC Driver's License | Last Will and Testament & Ancillary Docs | 4-Aug-15 | Capt John Doe |

***Personal Notary Logbook – Capt John Doe***

# Sample §1044a Notary Logbook

**HQ BN (LEGAL)**
**CAMP LEJEUNE, NC YEAR 2015**

| A | B | C | D | E | F |
|---|---|---|---|---|---|
| SIGNER'S SIGNATURE | PRINT SIGNER'S NAME & ADDRESS Rank if Applicable | TYPE OF ID USED | TYPE OF DOCUMENT NOTARIZED | DATE OF NOTARIZATION | PRINTED NAME/RANK OF NOTARY |
| *Mary Smith* | Cpl Mary Smith HQ BN, MCB CamLej | Military ID Card | State Residency Form | 3-Aug-15 | 1stLt Samantha Johnson HQ BN Legal Officer |
| *Sam Sloane* | Cpl Sam Sloane HQ Bn, MCB CamLej | Passport | Bill of Sale - Auto | 3-Aug-15 | 1stLt Samantha Johnson HQ BN Legal Officer |
| | | | | | |

# Duties and Responsibilities of a Notary

- **Notaries <u>SHALL NOT</u>:**
  - **Engage in the practice of law and accordingly may not draw up legal documents outside the supervision of an attorney**
  - **Sign their names to blank instruments**
  - **Certify the authenticity of public, registered, court records or documents or issue certified copies of such documents or records**
  - **Administer oaths and take affirmations unless the person who signs the instrument is actually in their presence**
  - **Falsely execute certificates, such as predating or postdating the document**
  - **Delegate their notarial authority to another person**
  - **Perform a notarial act when the notary is party to, personally involved in, or financially impacted by the transaction (Note: State law may allow in certain circumstances)**

# Duties and Responsibilities of a Notary

**Notaries <u>SHALL NOT</u>:**

- **Serve as witness and notary in the same transaction**

- **Accept any fees or compensation for oaths or notarial acts performed**

- **Perform or be required to perform a notarial act that the notary believes**
  - **is for a transaction which the notary suspects is illegal, false, or deceptive**
  - **is for a person being coerced**
  - **is for a person whose demeanor causes compelling doubts about whether the person knows the consequences of the transaction required for a notarial act**
  - **impugns or compromises the notary's impartiality**

- **Active Duty Notaries may be subject to administrative or disciplinary action, which may include the initiation of court martial proceedings and/or administrative separation, for failure to properly execute their official notarial duties**

# DEFINITIONS

# Definitions

- **<u>Acknowledgement</u> is a signed statement by the notary that the signer 1) personally appeared before the notary 2) was positively identified by the notary and 3) acknowledged having signed the document in the physical presence of the notary who affixes his or her notary acknowledgment to the power of attorney, deed, beneficiary designation form, contract, etc.**

- **<u>Affirmation</u> has the same legal effect as an oath. It is a solemn declaration regarding the contents of the written affidavit, made by persons who decline to take an oath referencing God for religious or conscientious reasons**

# Definitions

- **Apostille** (pronounced a-po-stee) is a certificate authenticating the seals and signatures of officials on public documents such as birth certificates, notarials, court orders, or any other document issued by a public authority, so that they can be recognized in foreign countries that are parties to the Hague Apostille Convention. *("Authentication" Certificates are issued for documents which are destined for use in countries that are not parties to the Hague Apostille Convention)*

  - Documents requiring an Apostille issued by the U.S. Department of State are those which have been signed by one of the following:

    - U.S. Federal Official
    - An American Consular Officer
    - A Military Notary, Judge Advocate (10 U.S.C. §1044a), or a foreign Consul diplomatic official registered with the State Department Office of Protocol

  - The U.S. State Department Authentications Office is responsible for signing and issuing certificates under the Seal of the U. S. Department of State for documents being submitted to foreign countries

  - It is important to understand that the Apostille does not authenticate the contents or effect of the document in any way. It pertains strictly to the notary's authority to perform notarial acts on the date of the specific notarization and the authenticity of the notary's signature and seal on that particular notarial certificate

Go to:
http://travel.state.gov/content/travel/english/legal-considerations/judicial/authentication-of-documents/notarial-and-authentication-apostille.html

http://www.hcch.net/upload/abc12e.pdf
http://travel.state.gov/content/travel/english/legal-considerations/judicial/authentication-of-documents/office-of-authentications.html

# Definitions

**Apostille (con't)**

- **Under State Notarial Authority:**
  - **An apostille is an official document certifying that the notary who performed a particular notarial act was a notary in good standing at the time of the notarization. It also certifies the authenticity of the notary's signature and seal. Documents that will require an apostille will be destined for countries that have signed the Hague Convention on Abolishing the Requirement of Legalization for Foreign Public Documents. It is important to understand that the apostille does not authenticate the contents or effect of the document in any way. It pertains strictly to the notary's authority to perform notarial acts on the date of the specific notarization and the authenticity of the notary's signature and seal on that particular notarial certificate**
  - **Only the notary's state appointing authority or "competent authority" can issue a certificate of notarial authority or an apostille. Usually, this is the Secretary of State's office, but may also be the county Clerk of Court, the Governor's or Lieutenant Governor's office, or Treasury Department**
  - **www.asnnotary.org/?form=apostillecertificateofauthority**

**[*American Society of Notaries*]**

# Definitions

- **Certified Copy** **(a.k.a. Certified True Copy) is a document certified as being a true copy of the original document on file in the originating office.**
  - **Only the specific business or other entity that originated the document or maintains the original as part of its official responsibilities has the legal authority to verify the authenticity of a copy of that original document**

- **Competence**
  - **The mental ability to distinguish right from wrong and to manage one's own affairs**
  - **A notary must be certain that all parties understand what they are signing and to what they are swearing or affirming**

- **Execute**
  - **To perform all formalities, as to make and sign a contract, or sign and deliver a note**
  - **Carry out some act or course of conduct to its completion**

- **Instrument**
  - **A legal document, such as a Power of Attorney, contract, deed, Will, or mortgage, which is to be executed by a principal, grantor, or party**

# Definitions

- **Jurat**
  - **Required for transactions where the signer must attest to the content of the document, such as all affidavits and pleadings in court**
  - **It is a certification on an affidavit declaring when, where and before whom it was sworn**
  - **In executing a jurat, a notary guarantees that the signer personally appeared before the notary, was given an oath or affirmation by the notary attesting to the truthfulness of the document, and signed the document in the notary's presence**
  - **It is always important that the notary positively identify a signer for a jurat, as s/he is certifying that the signer attested to the truthfulness of the document contents under penalty of perjury. However, jurat notarizations do not prove a document is true, legal, valid or enforceable**

- **Notary Log (a.k.a. Notary Journal) is an official record of each notarial act performed by the notary public, required for all notarial acts (including recording presence of witnesses)**

- **Oath is a solemn, formal declaration or promise to tell the truth (or attest that the contents of a document are true) , made before a notary public, under penalty of perjury that traditionally invokes reference to “so help me God” as witness**

# Definitions

- **Official Seal (Impression or Stamp) of the Notary**
  - **An embossed seal or ink stamp affixed to a legal document by a notary public**
  - **The combination of the seal and the notary's signature serves as independent verification that the identify of the person signing the document has been verified and, in some cases, that an oath or affirmation has also been sworn or administered**

- **Seal or "L.S."**
  - **The Latin phrase *logus sigilli* means "place of the seal." You may see these letters at the end of a signature line for the document signer or for the notary in more archaic or boiler plate documents.**
  - **Older documents used melted wax impressions over the L.S., bearing the corporate, government, or private insignia (the seal) of the signer**
- **SS.**
  - **An abbreviation of the Latin word *silicet*, (to wit) meaning "in particular" or "namely."**
  - **Commonly referred to as "jurisdiction" and traditionally included to the right of the venue in notary certificates**

# Definitions

- **Subscribe**
  - **To sign at the end of the document, so that the signature is at the very end of all substantive provisions**
  - **Requirement for a subscribed document exists to ensure that the acknowledgment is only good for documents as they appeared at the time of the acknowledgment, and not for any changes or additions following the signing by the customer or client**

- **Venue**
  - **The location in which the notarization was performed**
  - **“With the United States Armed Forces at (insert country, state, and county where the instrument is acknowledged)**